

Overview of the Licensed Site Remediation Professional (LSRP) Program

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Site Remediation Reform Act (SRRA)

The Site Remediation Reform Act (SRRA, N.J.S.A. 58:10C) set forth sweeping changes to the way in which sites are remediated in New Jersey. SRRA established the affirmative obligation for responsible parties to remediate contaminated sites in a timely manner. In order to achieve this goal SRRA created a category of remediation professionals known as Licensed Site Remediation Professionals (LSRP). LSRPs will “step into the shoes” of the Department of Environmental Protection (Department) to oversee the remediation of contaminated sites in most instances. SRRA requires that the LSRP must comply with all remediation statutes and rules and consider guidance when making remediation decisions.

In order to implement the statute, on November 4, 2009 the Department adopted interim rules. The Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C), and the Technical Requirements for Site Remediation (Technical Requirements, N.J.A.C.7:26E) as well as updates to several other Department rules were part of those interim rules. Go to <http://www.nj.gov/dep/srp/regs/> for more detailed information about these rules.

Under this new remediation paradigm, in most instances the remediating party need not wait for DEP direction and pre-approvals to commence and continue cleanups. Instead they must initiate and complete the cleanup under the direction of an LSRP, who will have responsibility for oversight of the environmental investigation and remediation. The Department will monitor the remediation progress and the actions of LSRPs by requiring the submittal of forms and reports as remediation milestones are reached.

Phase in of the LSRP Program

SRRA provides a three year phase in period for persons responsible for conducting the remediation to cleanup sites under the new LSRP remediation paradigm. The program will be fully implemented by May 7, 2012. During this phase in period, existing cases (cases where remediation was initiated before November 4, 2009 and are being continuously remediated) can continue under the traditional remediation paradigm with an assigned case manager who will oversee and approve each phase of remediation prior to the person moving on to the next phase, with the goal of receiving a Department issued No Further Action (NFA) determination when all remediation requirements are fulfilled. Alternatively, existing cases may “opt in” to the LSRP program by hiring an LSRP and notifying the Department accordingly. All parties remediating new cases (remediation initiated on or after November 4, 2009) must hire an LSRP and remediate under the new program. **Effective May 7, 2012 when the LSRP program is fully implemented, all remediating parties will be required to retain an LSRP and remediate their site under the new LSRP paradigm, regardless of when the cleanup was initiated.**

Roles and Responsibilities

The Department’s role in the LSRP program is to regulate responsible parties through its remediation regulations including ARRCS, Technical Requirements, Underground Storage Tank

rules (N.J.A.C. 7:14B), the Industrial Site Remediation Act rules (N.J.A.C. 7:26B), and the Remediation Standards rules (N.J.A.C. 7:26D). This includes inspecting and reviewing LSRP submittals to ensure that remediation work is completed in accordance with the Department's applicable standards and regulations.

The Responsible Party's role in the LSRP program is to remediate contaminated sites in accordance with the Department's applicable standards and regulations. Responsible parties are required to hire LSRPs that will oversee remediations and issue Response Action Outcome letters (RAO) when remediations are complete.

The LSRP's role in the LSRP program is to oversee the remediation of contaminated sites in accordance with the Department's applicable standards and regulations for responsible parties. They are subject to a strict code of conduct established by statute and regulation and must ensure that remediations are protective of human health, safety and the environment. The conduct of LSRPs is overseen by the Site Remediation Professional Licensing Board.

The Site Remediation Professional Licensing Board's role in the LSRP program is to establish licensing requirements for site remediation professionals and oversee the licensing and performance of site remediation professionals. The vision of the board is to provide an effective licensing program for site remediation professionals that facilitates cleanup of sites in a manner that is protective of public health and safety and the environment, and ensures the competency of Licensed Site Remediation Professionals.

Regulatory and Mandatory Time Frames

Regulatory time frames are the time periods specified in the Department's Technical Requirements rules within which all persons responsible for conducting remediation must complete specified remedial activities. Failure to comply with regulatory time frames may result in an enforcement action by the Department. The person may request an extension of a regulatory time frame for good cause by submitting an Extension Request Form to the Department. The remediating party may assume the extension is "granted" unless they hear otherwise from the Department. During the transition period, the Department is utilizing "compliance assistance" (see below) for all new cases and for existing cases that "opt in." This means that the Department will work with persons responsible for conducting the remediation in order to help the person remain in compliance with the Department's remediation rules. However, if after receiving compliance assistance from the Department the person still misses a regulatory time frame or extension thereof, the person may be exposed to enforcement actions and penalties pursuant to the ARRCs rules, N.J.A.C. 7:26C-9.

Mandatory time frames are the time periods specified in the Department's ARRCs rules, N.J.A.C. 7:26C-3.3 within which all persons responsible for conducting remediation must complete certain remedial activities. Establishment of these time frames is mandated in SRRA at N.J.S.A. 58:10C-28. Failure to comply with mandatory time frames will make the person conducting remediation subject to direct Department

oversight pursuant to SRRA (see N.J.S.A. 58:10C-27). Currently, there are four rule requirements that have two-year mandatory time frames. These requirements are:

- The submission of a Preliminary Assessment/Site Investigation report, if one is required;
- The submission of an initial Receptor Evaluation Report/Form;
- The initiation of Immediate Environmental Concern (IEC) source control, if an IEC condition is discovered at a site (see IEC Guidance for definition of IEC); and
- The installation and operation of a free product (LNAPL) recovery system, if free product is discovered at a site.

Persons responsible for conducting the remediation may request an extension of a mandatory time frame for good cause as described in the ARRC rules, N.J.A.C. 7:26C-3.5, by submitting an Extension Request Form to the Department at least 60 days prior to the expiration date. These rules require that the person requesting the extension continue with the remediation until receiving a written response from the Department. As noted above, the violation of a mandatory time frame will expose the remediating party to direct Department oversight. Direct Department oversight requires that a Remediation Trust Fund be established and involves a greater level of Department control over the remediation which is significantly more onerous than the current case manager process. Go to www.nj.gov/dep/srp/guidance/srra/direct_oversight.pdf for more information regarding the Department's definition of direct oversight.

Expedited Site Specific Time Frames

SRRA allows the Department to establish expedited site specific time frames at N.J.S.A. 58:10C-28a and the Department has included the regulatory requirements for these at N.J.A.C. 7:26C-3.4. Expedited site specific time frames may be established when the Department determines that expedited action is necessary to protect public health, safety and the environment or based on the compliance history of the remediating party. The remediating party will be notified by the Department when this occurs.

Inspection and Review Process

Under the new LSRP program, every document that is submitted by an LSRP, up to and including a Response Action Outcome (RAO), is inspected by the Department. When certain conditions exist these documents may undergo a more detailed review. The Department is committed to completing these inspections/reviews in a timely manner. To date, the average time to complete the inspection/review of an RAO is less than 30 days.

It is important to note that an RAO issued by the LSRP is equivalent to the NFA letter issued by the Department.

SRRA “Three Year Reopener” Provision

Pursuant to N.J.S.A. 58:10C-25, the Legislature directed the Department not to audit a Response Action Outcome (RAO) more than three years after the date the LSRP filed the RAO with the Department, unless:

1. Undiscovered contamination is found on a site for which an RAO has been filed;
 2. The Site Remediation Professional Licensing Board conducts an investigation of the LSRP; or
 3. The LSRP who issued the RAO has had their license suspended or revoked by the Board.
- In this case, the RAO can be audited at any time.

As was the case with No Further Action letters, if new information comes to light about a remediated site and the Department determines that the site conditions are no longer protective of public health and the environment, the Department may invalidate the RAO. The details of this process are being developed under the final ARRCs rule.

Compliance Assistance

As noted above, as part of the transition process, the Department is employing a “compliance assistance” approach for new cases and “opt in” cases. This means that in the case review process if there is any question about a report or form submitted to the Department, the inspector and/or reviewer will contact the LSRP by phone or email as needed to discuss and resolve any issue concerning the submittal. While in compliance assistance mode, the Department will not send deficiency letters which could result in multiple rounds of reports and reviews. Instead, the Department has committed to working with LSRPs and persons responsible for conducting remediation to ensure that sites undergoing remediation are protective of public health and the environment. If more technical advice is required the person responsible for conducting the remediation and/or the LSRP can schedule a technical consultation with the Department to address the issues and concerns in a timely manner. Remediating parties that “opt in” may retract existing submittals to the Department and have their LSRP remedy any deficiencies previously identified by the Department. More information about opting in can be found at http://www.nj.gov/dep/srp/srra/lsrp/opt_in.htm, and information regarding technical consultations can be found at http://www.nj.gov/dep/srp/srra/technical_consultation/.

Remediation Funding Source and Financial Assurance

Remediation Funding Sources (RFS) are Department approved financial mechanisms required to be established and maintained to secure the appropriate funding to ensure completion of the remediation at a contaminated site. An RFS is required to be established for industrial establishments being remediated pursuant to ISRA upon the Department’s approval or the LSRP’s certification of a Remedial Action Workplan, or as required pursuant to an ISRA Remediation Agreement or an Administrative Consent Order. The RFS must be maintained until such time as an NFA is issued or an RAO is filed. There is a required annual one percent (1%) surcharge payment associated with the RFS financial mechanisms except for the self-guarantee mechanism. Financial Assurances (FA) are Department approved financial mechanisms required to be established when applying for a Remedial Action Permit that includes engineering

controls to secure the appropriate funding to ensure the maintenance of all engineering controls at a contaminated site. The FA does not require an annual one percent (1%) surcharge payment. The self-guarantee mechanism may not be used to satisfy the FA requirements. There are several remediating parties that are exempt from this requirement. Please go to the following webpage for additional details: <http://www.nj.gov/dep/srp/srra/training/>

Due Diligence

A person who is conducting due diligence at a site is not required to hire an LSRP to perform the due diligence as long as the person:

1. Does not own the site in question;
2. Conducts the preliminary assessment and site investigation (if the preliminary assessment indicates that a site investigation is required) of the site for the purpose of conducting all appropriate inquiry into previous ownership and uses of the property; and
3. Has not discharged a hazardous substance at the site and is not in any way responsible for a hazardous substance discharged at the site.

Remediation of Unregulated Heating Oil Tanks (UHOT)

The owner or operator of an unregulated heating oil tank (UHOT) may choose to hire either an LSRP or a subsurface evaluator certified pursuant to the UST rules (see N.J.A.C. 7:14B). Currently, mandatory time frames do not apply to these cases nor is a preliminary assessment required. The Department is developing regulations specific to UHOT remediation that are expected to be proposed by Summer 2011.

Contact Information

If you have any questions regarding the information contained in this document or any of the SRRA overview materials please contact Karen Ricciardi at 609-292-5299 or by email at Karen.Ricciardi@dep.state.nj.us.

You may also consult with your environmental professional to learn more about the LSRP program.

If you have questions on other site remediation topics please use SRP's Contacts list provided at http://www.nj.gov/dep/srp/srra/srra_contacts.htm.

Disclaimer

NJDEP has prepared this document to provide general information about the LSRP program. No one should consider this document as a sole source of information sufficient in itself to dictate any outcome or decision on the remediation of a contaminated site. Rather, this material should be utilized as a resource tool to highlight key points of the Site Remediation Reform Act, and the LSRP Program in anticipation of its full implementation in May 2012.
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